

THOMAS E. FRANKOVICH (State Bar No. 074414)
 THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION
 4328 Redwood Hwy., Suite 300
 San Rafael, CA 94903
 Telephone: (415) 674-8600
 Facsimile: (415) 674-9900
 Email: tfrankovich@disabilitieslaw.com

Attorney for Plaintiffs
 DAREN HEATHERLY and
 IRMA RAMIREZ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAREN HEATHERLY; and IRMA
 RAMIREZ,

 Plaintiffs,

 v.
 WEST COLLEGE CENTER, LLC;
 GAGMAR, INC., a California Corporation
 dba G & G SUPER MARKET; and NUON
 PHARA, an individual dba PAGE'S
 DINER,

 Defendants.

) **CASE NO.**
) **Civil Rights**
)
) **COMPLAINT FOR INJUNCTIVE RELIEF**
) **AND DAMAGES:**
)
) **1st CAUSE OF ACTION:** For Denial of Access
) by a Public Accommodation in Violation of the
) Americans with Disabilities Act of 1990 (42
) U.S.C. §12101, *et seq.*)
) **2nd CAUSE OF ACTION:** For Denial of Full
) and Equal Access in Violation of California
) Civil Code §§54, 54.1 and 54.3
)
) **3rd CAUSE OF ACTION:** For Denial of
) Accessible Sanitary Facilities in Violation of
) California Health & Safety Code §19955, *et seq.*
)
) **4th CAUSE OF ACTION:** For Denial of
) Access to Full and Equal Accommodations,
) Advantages, Facilities, Privileges and/or
) Services in Violation of California Civil Code
) §51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

1 Plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ complain of defendants
2 WEST COLLEGE CENTER, LLC; GAGMAR, INC., a California Corporation dba
3 G & G SUPER MARKET; and defendant NUON PHARA, an individual dba PAGE'S DINER
4 and allege as follows:

5 **INTRODUCTION:**

6 1. This is a civil rights action for discrimination against persons with physical
7 disabilities, of which class plaintiff DAREN HEATHERLY, plaintiff IRMA RAMIREZ and the
8 disability community are members, for failure to remove architectural barriers structural in nature
9 at defendants', a place of public accommodation, thereby discriminatorily denying each plaintiff
10 and the class of other similarly situated persons with physical disabilities access to, the full and
11 equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services,
12 and accommodations thereof. Each plaintiff seeks injunctive relief and damages pursuant to the
13 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code §§51,
14 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

15 2. Plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ each is a person
16 with physical disabilities who, on or about the dates set forth herein, between December 19, 2012
17 through December 5, 2014 and (**deterred thereafter**), was an invitee, guest, patron, customer at
18 defendants' G & G Market and Page's Diner, which are public accommodations within the
19 WEST COLLEGE CENTER MALL in the City of Santa Rosa, California. At said times and
20 place, defendants failed to provide proper legal access to those and other public -
21 accommodations within the mall, each of which is a "public accommodation" and/or a "public
22 facility" including, but not limited to parking, elements of the service counters, dining areas and
23 restrooms. The denial of access was in violation of both federal and California legal
24 requirements, and plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ each suffered
25 violation of his/her civil rights to full and equal access, and was embarrassed and humiliated.

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JURISDICTION AND VENUE:

3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C. §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.* Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same nucleus of operative facts and arising out of the same transactions, are also brought under parallel California law, whose goals are closely tied with the ADA, including but not limited to violations of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et seq.*, including §19959; California Building Code.

4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is founded on the facts that the real property which is the subject of this action is located at/near 1007 - 1211 West College Avenue, in the City of Santa Rosa, County of Sonoma, State of California, and that plaintiffs' causes of action arose in this county.

PARTIES:

5. Plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ each is a "physically handicapped person," a "physically disabled person," and a "person with physical disabilities" (hereinafter the terms "physically disabled," "physically handicapped" and "person with physical disabilities" are used interchangeably, as these words have similar or identical common usage and legal meaning, but the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54 and 54.1, and other statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ each is a "person with physical disabilities," as defined by all applicable California and United States laws. Plaintiff DAREN HEATHERLY is afflicted with Multiple Sclerosis and Diabetes. Plaintiff DAREN HEATHERLY relies on a wheelchair to travel about in public. Plaintiff IRMA RAMIREZ suffers from Post-Polio syndrome. Plaintiff IRMA RAMIREZ relies on a wheelchair and/or crutches to travel about in public.

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Consequently, plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ each is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code §19955, *et seq.* (entitled “Access to Public Accommodations by Physically Handicapped Persons”) and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*

6. **DEFINITIONS:**

- a. **ADAAG** - The Americans with Disabilities Act Accessibility Guidelines of 1990; and The Americans with Disabilities Act Accessibility Guidelines 2010 revision. (Used where applicable).
- b. **ARCHITECTURAL BARRIERS** - Architectural barriers are physical features that limit or prevent people with disabilities from obtaining the goods or services that are offered. They can include but are not limited to the following examples: parking spaces that are too narrow to accommodate people who use wheelchairs; a step or steps at the entrance or to part of the selling space of a store; round doorknobs or door hardware that is difficult to grasp; aisles that are too narrow for a person using a wheelchair; electric scooter, or a walker; a high counter or narrow checkout aisles at a cash register, and fixed tables in eating areas that are too low to accommodate a person using a wheelchair or that have fixed seats that prevent a person using a wheelchair from pulling under the table. Excerpted from the “*ADA Guide for Small Businesses*” with an interlineation modification. <http://www.ada.gov/smbustxt.htm>. (The descriptive use of the word “barriers” as used herein is synonymous with architectural barriers).

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- 1 c. **ELEMENTS** - An architectural or mechanical component of a building,
2 facility, space, or site (e.g., telephone, curb ramp, door, flush valve,
3 drinking fountain, seating, or water closet, toilet seat, dispensers) and/or
4 placement or lack thereof.
- 5 d. **CATEGORICAL ARCHITECTURAL BARRIERS** - Are elements and
6 facilities which are, or can be architectural barriers standing alone or in
7 combination with one another where the element(s)/facility(s) is/are
8 noncomplying or where the combination thereof creates a category. For
9 example: such as a parking lot, entrance, restroom, lobby, guest room,
10 dining area.
- 11 e. **PHYSICAL FEATURES** - Are synonymous with "Elements."
- 12 f. **FACILITY** - All or any portion of buildings, structures, site
13 improvements, complexes, equipment, roads, walks, passageways, parking
14 lots, or other real or personal property located on a site.
- 15 g. **ENTRANCE** - Any access point to a building or portion of a building or
16 facility used for the purpose of entering. An entrance includes the
17 approach walk, the vertical access leading to the entrance platform, the
18 entrance platform itself, vestibules if provided, the entry door(s) or
19 gate(s), and the hardware of the entry door(s) or gate(s).
- 20 h. **CLEAR FLOOR SPACE** - The minimum unobstructed floor or ground
21 space required to accommodate a single, stationary wheelchair and
22 occupant.
- 23 i. **ACCESSIBLE ROUTE** - A continuous unobstructed path connecting all
24 accessible elements and spaces of a building or facility. Interior accessible
25 routes may include corridors, floors, ramps, elevators, lifts, and clear floor
26 space at fixtures. Exterior accessible routes may include parking access
27 aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.

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j. **PATH OF TRAVEL** - A continuous path connecting all elements and spaces of a building or facility.

k. **NON COMPLYING** - Not complying with ADAAG and/or the “Readily Achievable Standard” of 28 CFR §36.304.

PRELIMINARY FACTUAL ALLEGATIONS:

7. The WEST COLLEGE CENTER MALL, is a public accommodation comprised of the following public accommodations: G & G Market, Page’s Diner, Los Girasoles, LuLu’s Café, Re-Style Market Places and Dollar Drug, Union Hotel Pizza & Pasta Company, located at/near 1007 - 1211 West College Avenue, Santa Rosa, California. The WEST COLLEGE CENTER MALL and each of its public accommodations its parking, elements of service counters, dining areas, path of travel, restrooms and entrance to Page’s Diner, and its other facilities are each a “place of public accommodation or facility” subject to the barrier removal requirements of the Americans with Disabilities Act. On information and belief, each such facility has, since July 1, 1970, undergone “alterations, structural repairs and additions,” each of which has subjected the public accommodations of WEST COLLEGE CENTER MALL and each of its facilities, its parking, elements of service counters, dining areas, path of travel, restrooms and entrance to Page’s Diner to disability access requirements per the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and the California Building Code.

8. Defendant WEST COLLEGE CENTER, LLC is the owner of the real property (land and building) located at or near 1007 - 1211 West College Avenue, Santa Rosa, California.

9. Defendants WEST COLLEGE CENTER, LLC; GAGMAR, INC., a California Corporation dba G & G SUPER MARKET; and NUON PHARA, an individual dba PAGE’S DINER (hereinafter alternatively collectively referred to as “defendants”) are the owners and operators, lessors and/or lessees, or agents of the owners, lessors and/or lessees, of the public accommodation known as WEST COLLEGE CENTER, located at/near 1007 - 1211 West College Avenue, Santa Rosa, California, or of the building and/or buildings which constitute said public accommodation.

10. At all times relevant to this complaint, defendants WEST COLLEGE CENTER, LLC; GAGMAR, INC., a California Corporation dba G & G SUPER MARKET; and NUON PHARA, an individual dba PAGE'S DINER, own and operate in joint venture the subject mall, G&G Market and Page's Diner each as a public accommodation. Those businesses are open to the general public and conduct business therein. Each business is a "public accommodation" or "public facility" subject to the requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

11. On or about the year of 1998, defendant WEST COLLEGE CENTER, LLC and each of them purchased and/or took possessory control of the premises now known as WEST COLLEGE CENTER MALL. At all times prior thereto, defendants' and each of them were aware of their obligation prior to the close of escrow, or upon taking possessory interest that public accommodations had a duty to identify and remove architectural barriers and were aware that the now G&G Market, Page's Diner and parking lot of the WEST COLLEGE CENTER MALL were not accessible to the disabled. Nevertheless, defendants' and each of them, operated the mall as though it was accessible.

12. At all times relevant to this complaint, defendants WEST COLLEGE CENTER, LLC; GAGMAR, INC., a California Corporation dba G & G SUPER MARKET; and NUON PHARA, an individual dba PAGE'S DINER are jointly and severally responsible to identify and remove architectural barriers at the subject WEST COLLEGE CENTER MALL pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent part:

§ 36.201 General

(b) *Landlord and tenant responsibilities.* Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

28 CFR §36.201(b)

1 13. At all times stated herein, defendants' and each of them with the knowledge that
2 each of them had a continuing obligation to identify and remove architectural barriers where it
3 was readily achievable to do so, failed to adopt a transition plan to provide better and/or
4 compliant access to the subject accommodation.

5 14. At all times referred to herein and continuing to the present time, defendants, and
6 each of them, advertised, publicized and held out the public accommodations comprising the
7 WEST COLLEGE CENTER MALL as being handicapped accessible and handicapped usable.

8 15. On or about the year of 2000 through approximately December 5, 2014 and
9 thereafter, plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ frequented G & G
10 Market as one of their primary grocery stores as it is only 4.2 miles from their home.

11 16. On or about but between December 19, 2012, December 5, 2014 and thereafter,
12 plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ each was an invitee and guest at
13 the subject mall and specifically G & G Market and Page's Diner, for purposes of shopping for
14 groceries, sundries, beverages, meat, fish, chicken **AND** other goods and to have meals
15 consisting of food and beverages respectively. The operative dates both inside and outside the
16 statute of limitations are attached as **exhibit "A"** and incorporated by reference as though fully
17 set forth herein. Plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ are husband
18 and wife.

19 17. After speaking to employees of defendants and sending notice letter(s) on
20 **September 26, 2012 and September 27, 2013** to G & G market, and on March 14, 2012, July
21 24, 2013 and February 3, 2014 to Page's Diner, the landlord and/or tenant about access problems,
22 plaintiffs returned to the subject mall and these public accommodations, for the purposes of
23 participating in the goods and services provided and to see whether this public accommodation
24 had been made more accessible. Almost a quarter of a century has now passed since the
25 Americans with Disabilities Act of 1990 ("ADA") took effect.

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1 18. On or about those dates within the statute of limitations referenced in exhibit A
2 (exception: in approximately January of 2014, plaintiff IRMA RAMIREZ noted that handicap
3 parking spaces at/or in front of Page's Diner had been re-striped), plaintiff DAREN
4 HEATHERLY and plaintiff IRMA RAMIREZ encountered the following architectural barriers in
5 the parking lot of the WEST COLLEGE CENTER MALL and as a legal result had the following
6 adverse experiences: the parking spaces for the disabled serving G & G Market and nearest to
7 Page's Diner were none compliant in that they were not clearly identifiable and/or had built up
8 ramps in the access aisles and/or lacked a van accessible access aisle/resulting in plaintiffs being
9 unable to park in front of Page's Diner and/or fearing their vehicle would be blocked by another
10 vehicle and/or being concerned with navigating a ramp in the access aisle.

11 19. On or about those dates within the statute of limitations referenced in exhibit "A"
12 relative to G & G Market, plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ
13 encountered the following architectural barriers at the bakery and as a legal result had the
14 following adverse experiences: the bell to summon assistance was too high/neither plaintiff
15 IRMA RAMIREZ nor plaintiff DAREN HEATHERLY could reach it. Each time, if a counter
16 person was not present, each plaintiff had to wait until the person returned; plaintiffs tapped on
17 the glass case; or a passerby pushed the bell for them. Summoning assistance was difficult and
18 awkward for each plaintiff. The need to use the bell occurred 25% of the time(s).

19 20. On or about those dates within the statute of limitations referenced in exhibit "A"
20 relative to G & G Market (except after approximately mid-December of 2013, the dispenser was
21 lowered and except as of December 5, 2014, when the service bell was lowered), plaintiff
22 DAREN HEATHERLY and plaintiff IRMA RAMIREZ encountered the following architectural
23 barriers at the meat counter and as a legal result had the following adverse experiences: the "take
24 a number" dispenser was too high; neither plaintiff could reach the point of operations. Each had
25 to ask for assistance or ask a stranger to pull a ticket. It was awkward for each plaintiff to be in
26 such a position. Further, the meat case was too high, and often, each plaintiff was not seen as
27 they sought product from the display case(s). This adverse situation. 25% of the time(s).

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21. On or about those dates within the statute of limitations referenced in exhibit "A" relative to G & G Market, plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ encountered the following architectural barriers at the meat department of G & G Market and as a legal result had the following adverse experiences: the "service bell," point of operation was too high. Neither plaintiff DAREN HEATHERLY nor plaintiff IRMA RAMIREZ could reach it to summons assistance. This was the situation for each plaintiff approximately 25% of the time(s). Their choices were to wait until someone came out the store. Being a spectacle by tapping the glass, waiting for another customer to come and pushing the bell was awkward.

22. On or about those dates within the statute of limitations referenced in exhibit "A" relative to Page's Diner, plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ encountered the following architectural barriers at the entrance to Page's Diner and as a legal result had the following adverse experiences: the front door pressure was excessive. Both plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ struggled to open the door on 50% of the dates set forth. The other 50% of the dates set forth a third party opened the door for them. Simply put, 100% of the time, the door pressure posed a problem.

23. On or about those dates within the statute of limitations referenced in exhibit "A" relative to Page's Diner, plaintiff DAREN HEATHERLY and IRMA RAMIREZ encountered the following architectural barriers at the path of travel to the men's and women's restroom and as a legal result had the following adverse experiences: the path of travel to the restrooms was blocked by chairs, boxes and other obstacles/resulting in that neither plaintiff DAREN HEATHERLY nor plaintiff IRMA RAMIREZ could navigate each of their respective wheelchairs around and through the corridor to reach the restrooms except for one occasion, wherein plaintiff DAREN HEATHERLY was able to enter the men's restroom.

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1 24. On or about those dates within the statute of limitations referenced in exhibit "A"
2 relative to Page's Diner, plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ
3 encountered the following architectural barriers at the outside eating area of Page's Diner and as
4 a legal result had the following adverse experiences: the outside tables were not accessible. The
5 pedestal base of the tables precluded plaintiff DAREN HEATHERLY and IRMA RAMIREZ
6 from using those tables. Each plaintiff was deterred from using those tables in the summer
7 months.

8 25. From the year 2012 to the present year (2014), plaintiff IRMA RAMIREZ had
9 written a total of seven (7) letters to the landlords, tenants and/or managers at G&G Market and
10 Page's Diner. She wrote the following:

11 **September 26, 2012 - G & G Market (landlord and tenant):**

12 "In the last couple of weeks my husband and I have shopped at your market.
13 We enjoy shopping there. As we both use a wheelchair, we had problems
14 with accessing your butcher counter. The counter is so high none of the
15 butchers ever see us. The service bell and take a number machine are not
16 accessible to us because they are too high. If not for the kindness of other
17 customers alerting the butchers we might not get served. I thought the
18 landlord and the tenant should know about this. That's why I wrote this
19 identical letter to both of you. It's like letting the right hand know what the
20 left hand is doing! If you both put your heads and hands together, I know the
21 two of you can fix this problem. You need to learn what needs to be done and
22 do it now. So to help you, please call Pacific ADA and IT Center in Oakland
23 at 1-800-949-4232, and ask them to send you all the information they have
24 on access then you will know what to look at and what needs to be done.
25 Much of the work can be done by a handyman. Also, look into the \$10,000
26 tax credit for providing access. Remember, wheelchair users have an old
27 saying: "Access delayed is Access denied!" You understand, right? Anyway,
28 please write me when you get this letter, tell me what you plan on doing. If
you are not the one in charge or don't have the responsibility to do it, would
you make sure this letter goes to the person in charge or who can make
decisions on what to do. Thanks!"

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September 27, 2013 - G & G Market (manager only):

“It was exactly one year ago yesterday (September 26, 2012) that I wrote the manager of G&G Market regarding access problems in the meat department. I wrote about the service bell and the “take a number” ticket dispenser not being accessible to us because we both use wheelchairs. They are placed so high we can’t reach them. My husband and I were there last week and it is still a problem. Also, I want to point out to you my husband tried to use the restroom and was not able to. The restroom door was hard for him to open and the toilet stall was not wide enough for his wheelchair and he was not able to close the door. The lack of privacy forced him to go elsewhere. I think you could get a handyman to fix at least the simple things like lowering the service bell and ticket dispenser. You don’t need to take my word for it, but you need to learn what needs to be done and do it now. So to help you, please call Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the Department of Justice at 1-800-514-0301 and ask them to send you all the information they have on access then you will know what to look at and what needs to be done. Much of the work can be done by a handyman. Also, look into the \$10,000 tax credit for providing access. Remember, wheelchair users have an old saying: “Access delayed is Access denied!” You understand, right? Anyway, please write me when you get this letter, tell me what you plan on doing. If you are not the one in charge or don’t have the responsibility to do it, would you make sure this letter goes to the person in charge or who can make decisions on what to do. Thanks!”

March 14, 2012 - Page’s Diner (landlord and tenant):

“Recently, my husband and I visited Page’s Diner. We enjoyed your Diner very much. As we both use a wheelchair, we had problems with access at your Diner. First, we had problems with parking by the diner. There was no signage for handicap parking, the access aisles were not wide enough for a van and the emblems on the ground were very faded. Also, there was a curb in front of the access aisle for one of the handicap parking spaces and the other handicap parking space access aisle had a curb ramp in it. As a result of the bad parking we had to go all the way down to G&G Market to park. When we tried to get into your diner the front door pressure was so heavy I couldn’t open it and a customer at the diner was kind enough to open the door. When we were seated tables had to be rearranged to accommodate our wheel chairs. There were chairs stacked along the wall blocking the way to the restroom so we couldn’t use the restroom. It was busy and we did not want to inconvenience anyone by asking them to move chairs. We had quite a few problems that day. We were not able to use the restroom so you need to check it to determine if it is accessible. I thought the landlord and the tenant should know about this. That’s why I wrote this identical letter to both of you. It’s like letting the right hand know what the left hand is doing!

1 If you both put your heads and hands together, I know the two of you can fix
2 this problem. You need to learn what needs to be done and do it now. So to
3 help you, please call Pacific ADA and IT Center in Oakland at 1-800-949-
4 4232, and ask them to send you all the information they have on access then
5 you will know what to look at and what needs to be done. Much of the work
6 can be done by a handyman. Also, look into the \$10,000 tax credit for
7 providing access. Remember, wheelchair users have an old saying: "Access
8 delayed is Access denied!" You understand, right? Anyway, please write me
9 when you get this letter, tell me what you plan on doing. If you are not the
10 one in charge or don't have the responsibility to do it, would you make sure
11 this letter goes to the person in charge or who can make decisions on what to
12 do. Thanks!"

13 **July 24, 2013 - Page's Diner (manager only):**

14 "Recently, my husband and I visited Page's Diner. We enjoy your Diner very
15 much and we come quite often. I wrote to you over a year ago pointing out
16 that my husband and I could not use the restrooms because there were chairs
17 stacked along the wall. The chairs are still there and now there is a freezer
18 blocking the way to the restroom. My husband went to use the restroom.
19 Some of the staff helped move some of the boxes and chairs so he could get
20 through. When he got inside the restroom he had a very hard time using it
21 because the sink was in a cabinet and there was not much room to maneuver
22 his chair. He almost got stuck in the restroom. After maneuvering his chair
23 several times he was able to get out. Anyway, please write me when you get
24 this letter and tell me what you plan on doing to make your restrooms
25 accessible. Did you give my first letter to your landlord? Thank you."

26 **February 3, 2014 - Page's Diner (manager only):**

27 "Recently, my husband and I visited Page's Diner. We have been there
28 several times and enjoyed your Diner very much. We noticed the handicap
parking was being repainted and it seemed more handicap spaces were being
installed. That's good however, I wrote you a letter in March of 2012 and
again in July of 2013 pointing out the problems we had with your restrooms.
I never received an answer to the two letters. Anyway, nothing has been done
to correct the problems with the restrooms. Chairs and a freezer are still
stacked in the hallway blocking the path to the restrooms. When I went to use
the restroom I couldn't get to the restroom because there were some boxes,
a freezer and chairs in the hallway. I just thought I would point this out
again. Please write me when get this letter and let me know what you plan
on doing to correct this problem."

Plaintiff IRMA RAMIREZ never received a response and neither letter was returned to her from
the United States Postal Service.

1 26. On or about December 6, 2014, and thereafter, plaintiff would have returned to
 2 the WEST COLLEGE MALL but was deterred from returning for the fear that once he/she
 3 returned, he/she would encounter all of the same architectural barriers as on the first visit and that
 4 not even the easiest barrier(s) would have been removed such as the following: painting the
 5 parking, lowering ticket the ticket dispenser(s), clearing an accessible route to make it easier to
 6 enjoy the goods, services and opportunities afforded by these public accommodations.

7 27. Plaintiff IRMA RAMIREZ has been informed and believes that the women's
 8 restroom at Page's Diner is neither accessible nor usable.

9 28. Therefore, at said times and place, plaintiff DAREN HEATHERLY and plaintiff
 10 IRMA RAMIREZ, encountered the following architectural barriers as stated herein or lack
 11 thereof and/or "elements" and "facilities" which constituted architectural barriers and/or
 12 categorical architectural barriers and a denial of the proper and legally required access to a public
 13 accommodation to persons with physical disabilities including, but not limited to:

- 14 a. lack of the requisite type and number of disabled parking stall(s);
- 15 b. lack of the requisite number of regular disabled parking stall(s);
- 16 c. lack of disabled van accessible parking stall(s);
- 17 d. lack of (proper) disabled parking signage;
- 18 e. lack of an accessible entrance of Page's Diner;
- 19 f. lack of accessible service counters, bells and ticket dispensers at G & G
 20 Market;
- 21 g. lack of a handicapped-accessible women's public restroom at Page's
 22 Diner;
- 23 h. lack of a handicapped-accessible men's public restroom at Pages's Diner;
- 24 i. lack of signage, policies, procedures and guidelines to ensure the person(s)
 25 with disabilities to the maximum extent possible have an opportunity to
 26 share in the same goods, services and opportunities as those afforded to
 27 able-bodied persons; and
- 28 j. On personal knowledge, information and belief, other public facilities and
 elements too numerous to list were inaccessible to plaintiff(s) and for use
 by other persons with physical disabilities similarly situated.

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29. Specific architectural barriers encountered by plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ at said time(s) and place herein in addition to categorical architectural barriers stated herein and the respective difficulties experienced by plaintiffs as stated herein, the barriers include, but are not limited to:

PARKING

- insufficient van accessible parking stall(s) and access aisle(s);
- non complying van accessible parking stall access aisle(s);
- unidentifiable/non complying ISA symbol on the surface of parking stall(s);

ENTRANCE

- inaccessible entrance at Page's Diner; 11lbs. pressure;

DINING

- inaccessible outside table seating (table height and noncomplying pedestal) at Page's Diner;
- lack of required five (5) percent accessible seating;

PATH OF TRAVEL

- lack of accessible path(s) of travel to restroom(s) at Page's Diner (obstacles in corridor);

RESTROOMS

- noncomplying restrooms for the disabled;
- door knobs and latches that require grasping, turning or pinching;
- no rear grab bar(s);
- insufficient room between lavatory and water closet;
- paper towel dispenser(s) too high or not properly placed (approximately 61");
- noncomplying mirror (approximately 55");
- lavatory apron (approximately 25"); and
- insufficient clear space.

1 Therefore, as a legal result of encountering each of said elements, plaintiffs experienced one, all,
2 or a combination of the following adverse experiences: stress, strain, difficulty, and discomfort to
3 his/her upper extremities in attempting to and/or using said elements also causing anxiety,
4 disappointment, and embarrassment.

5 30. At all times as stated herein, plaintiff DAREN HEATHERLY and plaintiff
6 IRMA RAMIREZ encountered architectural barrier(s) as stated herein and/or had personal
7 knowledge of said barrier(s) and knew it would be a futile gesture to attempt to overcome
8 it/them because of his/her disability.

9 31. At all times stated herein, it was “readily achievable” for defendants to
10 remove some and/or all of the architectural barriers complained of over a reasonable period
11 of time from the date that defendants initially took possession to meet the affirmative duty to
12 identify and remove architectural barriers where it is readily achievable to do so. In that
13 regard, defendants could have but did not avail themselves of the tax deduction and tax
14 credits provided by Internal Revenue Services (“IRS”) codes 44 and 190, which apply to the
15 costs of barrier removal.

16 32. At all times and place, each architectural element as stated herein that did
17 not strictly comply with or substantially comply with the ADAAG minimum requirements
18 constituted an architectural barrier which precluded plaintiff DAREN HEATHERLY and
19 plaintiff IRMA RAMIREZ from full and equal opportunities afforded to non disabled
20 persons to the goods and services of the public accommodations referred to herein.

21 33. Plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ were and
22 are deterred from returning to public accommodations referred to herein so long as
23 architectural barrier(s) complained of that he/she encountered, as stated herein are not
24 ADAAG compliant.

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1 34. At said times and place, when plaintiff DAREN HEATHERLY and
2 plaintiff IRMA RAMIREZ encountered the architectural barriers as stated herein, plaintiff
3 DAREN HEATHERLY and plaintiff IRMA RAMIREZ in seeing a barrier(s) and/or
4 attempting to overcome the barriers to gain access experienced any one or combination of
5 physical difficulty, discomfort, embarrassment, stress, strain, fatigue, anger, annoyance and
6 disappointment. This arose from plaintiffs' physical inability to effectively use his/her upper
7 extremities to easily overcome the architectural barriers as stated herein. This constitutes a
8 denial of full and equal access to the subject public accommodation and a denial of the
9 opportunity to independently enjoy and participate in the opportunities, goods and services
10 offered to non disabled persons and patrons, invitees and guests.

11 35. Said architectural barrier(s) as stated herein deprived and deterred plaintiff
12 DAREN HEATHERLY and plaintiff IRMA RAMIREZ the same full and equal access that
13 a non wheelchair user/non disabled person would enjoy while engaging in the goods, service
14 and opportunities offered at the subject mall.

15 36. At all times stated herein, the existence of architectural barriers at
16 defendants' place of public accommodation evidenced "actual notice" of defendants' intent
17 not to comply with the Americans with Disabilities Act of 1990 either then, now or in the
18 future.

19 37. As a legal result of defendants WEST COLLEGE CENTER, LLC;
20 GAGMAR, INC., a California Corporation dba G & G SUPER MARKET; and NUON
21 PHARA, an individual dba PAGE'S DINER's failure to act as a reasonable and prudent
22 public accommodation in identifying, removing or creating architectural barriers, policies,
23 practices and procedures that denied access to each plaintiff and other persons with
24 disabilities, each plaintiff suffered the damages as alleged herein.

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1 38. As a result of the denial of equal access to defendants' facilities due to the acts
2 and omissions of defendants, and each of them, in owning, operating and maintaining these
3 subject public facilities, plaintiff DAREN HEATHERLY suffered violations of plaintiff's
4 civil rights, including, but not limited to his rights under Civil Code §§51, 52, 54, 54.1, and
5 54.3, *et seq.*

6 39. As a result of the denial of equal access to defendants' facilities due to the acts
7 and omissions of defendants, and each of them, in owning, operating and maintaining these
8 subject public facilities, plaintiff IRMA RAMIREZ suffered violations of plaintiff's civil
9 rights, including, but not limited to her rights under Civil Code §§51, 52, 54, 54.1, and 54.3,
10 *et seq.*

11 40. Further, plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ
12 suffered emotional distress, mental distress, mental suffering, mental anguish, which
13 includes, but is not limited to, shame, humiliation, embarrassment, upset, anger, frustration,
14 disappointment and worry, expectedly and naturally associated with a person with physical
15 disabilities encountering architectural barrier(s) as stated herein and being denied access, all
16 to his/her damages as prayed hereinafter in an amount within the jurisdiction of this court.
17 No claim is being made for mental and emotional distress over and above that is usually
18 associated with the encountering of architectural barriers and legally resulting in adverse
19 experiences. No expert testimony regarding this usual mental and emotional distress will be
20 presented at trial in support of the claim for damages.

21 41. Defendants', and each of their, failure to remove the architectural barriers
22 complained of herein created, at the time of plaintiff DAREN HEATHERLY and plaintiff
23 IRMA RAMIREZ's first visit to said public accommodation, and continues to create
24 continuous and repeated exposure to substantially the same general harmful conditions which
25 caused plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ harm as stated
26 herein.

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1 42. Plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ each was
2 denied his/her rights to equal access to a public facility by defendants WEST COLLEGE
3 CENTER, LLC; GAGMAR, INC., a California Corporation dba G & G SUPER MARKET;
4 and NUON PHARA, an individual dba PAGE'S DINER, because defendants WEST
5 COLLEGE CENTER, LLC; GAGMAR, INC., a California Corporation dba G & G SUPER
6 MARKET; and NUON PHARA, an individual dba PAGE'S DINER maintained public
7 accommodations without access for persons with physical disabilities to its facilities,
8 including but not limited to parking, elements of service counters, dining areas, path of travel,
9 restrooms and entrance to Page's Diner , and other public areas as stated herein, and continue
10 to the date of filing this complaint to deny equal access to each plaintiff and other persons
11 with physical disabilities in these and other ways.

12 43. Construction alterations, if any, carried out by defendants have also triggered
13 access requirements under both California law and the Americans with Disabilities Act of
14 1990.

15 44. Defendants may have intentionally undertaken to modify and alter existing
16 building(s), and may have failed to make them comply with accessibility requirements under
17 the requirements of ADAAG and California Building Code.

18 45. Defendants have been negligent in their affirmative duty to identify the
19 architectural barriers complained of herein and negligent in the removal of some or all of said
20 barriers.

21 46. Because of defendants' violations, plaintiffs and other persons with physical
22 disabilities are unable to use public facilities such as those owned and operated by defendants
23 on a "full and equal" basis unless such facility is in compliance with the provisions of the
24 Americans with Disabilities Act of 1990, Civil Code §51, Civil Code §54.1 and Health &
25 Safety Code §19955, *et seq.* and other accessibility law as pled herein. Plaintiffs seek an
26 order from this court compelling defendants to make each public accommodation referred to
27 herein accessible to persons with disabilities.

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1 47. Each plaintiff, as described hereinbelow, seeks injunctive relief to require the
2 parking of the WEST COLLEGE CENTER MALL, G & G Market and Page's Diner to be
3 made accessible to meet the requirements of both California law and the Americans with
4 Disabilities Act of 1990, whichever is more restrictive, so long as defendants operate each of
5 them as a public facility.

6 48. Plaintiffs believe that even with service of the summons and complaint on
7 defendant(s) and each of them, that defendant(s) will not, under their "continuing obligation"
8 immediately undertake remedial action to identify and remove architectural barriers.

9 49. Each plaintiff seeks damages for violation of his/her civil rights for each of
10 their respective visits on all dates referenced within the statute of limitations as referred in
11 exhibit "A" relative to the overall parking, G & G Market, and Page's Diner minus those
12 occasions, if any, that each plaintiff will voluntarily exclude as a form of mitigation and
13 **deterrence occasion(s)** and seeks statutory damages of not less than \$4,000, pursuant to
14 Civil Code §52(a) or alternatively \$1000 pursuant to Civil Code §54.3, for each day after
15 his/her visit that the trier of fact (court/jury) determines was the date that some or all remedial
16 work should have been completed under the standard that the landlord and tenant had an
17 ongoing duty to identify and remove architectural barriers where it was readily achievable to
18 do so, which deterred plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ from
19 returning to the subject public accommodation because of his/her knowledge and/or belief
20 that neither some or all architectural barriers had been removed and that said premises
21 remains inaccessible to persons with disabilities whether a wheelchair user or otherwise.

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1 The acts and omission of defendants, and each of them, in failing to provide the required
2 accessible public facilities at the time of each plaintiff's visit and injuries, indicate actual and
3 implied malice toward each plaintiff, and despicable conduct carried out by defendants, and
4 each of them, with a willful and conscious disregard for the rights and safety of each plaintiff
5 and other similarly situated persons, and justify a trebling of damages as provided by Civil
6 Code §§52(a) and 54.3, in order to make a more profound example of defendants, and each of
7 them, to other operators and landlords of other malls and other public facilities, and to punish
8 defendants and to carry out the purposes of the Civil Code §§ 51, 51.5 and 54.

9 50. At all times stated herein and for post complaint occasions, plaintiff(s) have an
10 absolute unfettered civil right to return to the public accommodation(s) complained of within
11 thirty (30) day intervals until defendants remove all architectural barriers under their
12 continuing obligation to identify and remove architectural barriers.

13 51. Each plaintiff is informed and believes and therefore alleges that defendants
14 WEST COLLEGE CENTER, LLC; GAGMAR, INC., a California Corporation dba G & G
15 SUPER MARKET; and NUON PHARA, an individual dba PAGE'S DINER, and each of
16 them, caused the subject building(s) which constitute the public accommodations referred to
17 herein to be constructed, altered and maintained in such a manner that persons with physical
18 disabilities were denied full and equal access to, within and throughout said building(s) of the
19 subject mall and were denied full and equal use of said public facilities. Furthermore, on
20 information and belief, defendants have continued to maintain and operate said mall and/or
21 its building(s) in such conditions up to the present time, despite actual and constructive notice
22 to such defendants that the configuration of the WEST COLLEGE CENTER and/or its
23 building(s) is in violation of the civil rights of persons with physical disabilities, such as
24 plaintiff DAREN HEATHERLY, plaintiff IRMA RAMIREZ and other members of the
25 disability community.

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1 Such construction, modification, ownership, operation, maintenance and practices of such
2 public facilities are in violation of Civil Code §§51, 51.5 and 54, Health and Safety Code
3 §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

4 52. Defendants' actual and constructive notice that the physical configuration of
5 the facilities including, but not limited to, architectural barriers constituting the WEST
6 COLLEGE CENTER MALL and/or building(s) was in violation of the civil rights of persons
7 with physical disabilities, such as each plaintiff, includes, but is not limited to, coming into
8 contact with public accommodations with accessible elements and facilities since January 26,
9 1991, communications with invitees and guests, plaintiff IRMA RAMIREZ herself, possibly
10 sponsors of conferences, owners of other restaurants, hotels, motels and businesses, notices
11 they obtained from governmental agencies upon modification, improvement, or substantial
12 repair of the subject premises and other properties owned by these defendants, newspaper
13 articles and trade publications regarding the Americans with Disabilities Act of 1990 and
14 other access laws, public service announcements by former U.S. Attorney General Janet Reno
15 between 1993 and 2000, and other similar information. Defendants' failure, under state and
16 federal law, to make the WEST COLLEGE CENTER MALL accessible is further evidence
17 of defendants' conscious disregard for the rights of plaintiffs and other similarly situated
18 persons with disabilities. Despite being informed of such effect on each plaintiff and other
19 persons with physical disabilities due to the lack of accessible facilities, defendants, and each
20 of them, knowingly and willfully refused to take any steps to rectify the situation and to
21 provide full and equal access for each plaintiff and other persons with physical disabilities to
22 each public accommodation referred to herein. Said defendants, and each of them, have
23 continued such practices, in conscious disregard for the rights of each plaintiff and other
24 persons with physical disabilities, up to the date of filing of this complaint, and continuing
25 thereon. Defendants had further actual knowledge of the architectural barriers referred to
26 herein by virtue of the demand letter addressed to the defendants and served concurrently
27 with the summons and complaint.

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1 Said conduct, with knowledge of the effect it was and is having on plaintiffs and other
 2 persons with physical disabilities, constitutes despicable conduct in conscious disregard of
 3 the rights and safety of each plaintiff and of other similarly situated persons, justifying the
 4 imposition of treble damages per Civil Code §§52 and 54.3.

5 53. Plaintiff DAREN HEATHERLY, plaintiff IRMA RAMIREZ and the
 6 disability community, consisting of persons with disabilities, would, could and will return to
 7 the subject public accommodation when it is made accessible to persons with disabilities.

8 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
 9 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
 10 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**
 11 (On behalf of Plaintiff DAREN HEATHERLY and Plaintiff IRMA RAMIREZ, and
 12 Against Defendants WEST COLLEGE CENTER, LLC; GAGMAR, INC., a
 13 California Corporation dba G & G SUPER MARKET; and NUON PHARA, an
 14 individual dba PAGE'S DINER, inclusive)
 15 (42 U.S.C. §12101, *et seq.*)

16 54. Plaintiffs replead and incorporate by reference, as if fully set forth again
 17 herein, the allegations contained in paragraphs 1 through 53 of this complaint.

18 55. Pursuant to law, in 1990, the United States Congress made findings per
 19 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed
 20 to more fully protect:

21 some 43 million Americans with one or more physical or
 22 mental disabilities; [that] historically society has tended to
 23 isolate and segregate individuals with disabilities; [that] such
 24 forms of discrimination against individuals with disabilities
 25 continue to be a serious and pervasive social problem; [that]
 26 the nation's proper goals regarding individuals with disabilities
 27 are to assure equality of opportunity, full participation,
 28 independent living and economic self-sufficiency for such
 individuals; [and that] the continuing existence of unfair and
 unnecessary discrimination and prejudice denies people with
 disabilities the opportunity to compete on an equal basis and to
 pursue those opportunities for which our free society is
 justifiably famous.

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1 56. Congress stated as its purpose in passing the Americans with Disabilities Act
2 of 1990 (42 U.S.C. §12102):

3 It is the purpose of this act (1) to provide a clear and
4 comprehensive national mandate for the elimination of
5 discrimination against individuals with disabilities; (2) to
6 provide clear, strong, consistent, enforceable standards
7 addressing discrimination against individuals with disabilities;
8 (3) to ensure that the Federal government plays a central role in
9 enforcing the standards established in this act on behalf of
10 individuals with disabilities; and (4) to invoke the sweep of
11 Congressional authority, including the power to enforce the
12 14th Amendment and to regulate commerce, in order to address
13 the major areas of discrimination faced day to day by people
14 with disabilities.

15 57. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
16 (hereinafter the “ADA”), Congress passed “Title III - Public Accommodations and Services
17 Operated by Private Entities” (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
18 accommodations identified for purposes of this title was:

19 (7) PUBLIC ACCOMMODATION - The following private
20 entities are considered public accommodations for purposes of
21 this title, if the operations of such entities affect commerce -

22 (B) a restaurant, bar or other establishment serving food
23 or drink; and

24 (E) a bakery, grocery store, clothing store, hardware
25 store, shopping center, or other sales or rental establishment;

26 (F) a laundromat, dry-cleaner, bank, barber shop, beauty parlor, travel
27 service, shoe repair service, funeral parlor, gas station, office of an accountant
28 or lawyer, pharmacy, insurance office, professional office of a health care
provider, hospital or other service establishment.

42 U.S.C. §12181(7)(B)(E) and (F)

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1 58. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated
2 against on the basis of disability in the full and equal enjoyment of the goods, services,
3 facilities, privileges, advantages, or accommodations of any place of public accommodation
4 by any person who owns, leases, or leases to, or operates a place of public accommodation.”

5 59. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
6 42 U.S.C. §12182(b)(2)(a) are:

7 (I) the imposition or application of eligibility
8 criteria that screen out or tend to screen out an individual with
9 a disability or any class of individuals with disabilities from
10 fully and equally enjoying any goods, services, facilities,
11 privileges, advantages, or accommodations, unless such criteria
12 can be shown to be necessary for the provision of the goods,
13 services, facilities, privileges, advantages, or accommodations
14 being offered;

15 (ii) a failure to make reasonable modifications in
16 policies, practices, or procedures, when such modifications are
17 necessary to afford such goods, services, facilities, privileges,
18 advantages or accommodations to individuals with disabilities,
19 unless the entity can demonstrate that making such
20 modifications would fundamentally alter the nature of such
21 goods, services, facilities, privileges, advantages, or
22 accommodations;

23 (iii) a failure to take such steps as may be necessary
24 to ensure that no individual with a disability is excluded,
25 denied services, segregated or otherwise treated differently than
26 other individuals because of the absence of auxiliary aids and
27 services, unless the entity can demonstrate that taking such
28 steps would fundamentally alter the nature of the good, service,
facility, privilege, advantage, or accommodation being offered
or would result in an undue burden;

(iv) a failure to remove architectural barriers, and
communication barriers that are structural in nature, in existing
facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the
removal of a barrier under clause (iv) is not readily achievable,
a failure to make such goods, services, facilities, privileges,
advantages or accommodations available through alternative
methods if such methods are readily achievable.

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1 The acts of defendants set forth herein were a violation of each plaintiff's rights under the
2 ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et*
3 *seq.* - Effective January 31, 1993, the standards of the ADA were also incorporated into
4 California Civil Code §51, making available the damage remedies incorporated into Civil
5 Code §51 and 52(a) and 54.3.

6 60. The removal of the barriers complained of by plaintiffs as hereinabove alleged
7 were at all times after January 26, 1992 "readily achievable" as to the subject building(s) of
8 WEST COLLEGE CENTER MALL pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On
9 information and belief, if the removal of all the barriers complained of herein together was
10 not "readily achievable," the removal of each individual barrier complained of herein was
11 "readily achievable." On information and belief, defendants' failure to remove said barriers
12 was likewise due to discriminatory practices, procedures and eligibility criteria, as defined by
13 42 U.S.C. §12182 (b)(2)(A)(i) and (ii).

14 61. Per 42 U.S.C. §12181 (9), the term "readily achievable" means "easily
15 accomplishable and able to be carried out without much difficulty or expense." The statute
16 defines relative "expense" in part in relation to the total financial resources of the entities
17 involved. Each plaintiff alleges that properly repairing, modifying, or altering each of the
18 items that plaintiffs complains of herein were and are "readily achievable" by the defendants
19 under the standards set forth under §301(9) of the Americans with Disabilities Act.
20 Furthermore, if it was not "readily achievable" for defendants to remove each of such
21 barriers, defendants have failed to make the required services available through alternative
22 methods which were readily achievable.

23 62. On information and belief, construction work on, and modifications of, the
24 subject building(s) of WEST COLLEGE CENTER MALL occurred after the compliance date
25 for the Americans with Disabilities Act, January 26, 1992, independently triggering access
26 requirements under Title III of the ADA.

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1 63. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
2 *seq.*, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil
3 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as each plaintiff is being subjected to
4 discrimination on the basis of disability in violation of this title or have reasonable grounds
5 for believing that plaintiff is about to be subjected to discrimination in violation of §302.
6 Each plaintiff is deterred from returning to or making use of the public facilities complained
7 of herein so long as the premises and defendants' policies bar full and equal use by persons
8 with physical disabilities.

9 64. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person
10 with a disability to engage in a futile gesture if such person has actual notice that a person or
11 organization covered by this title does not intend to comply with its provisions." Pursuant to
12 this section, plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ each has not
13 returned to defendants' premises since on or about December 5, 2014, but on information and
14 belief, alleges that defendants have continued to violate the law and deny the rights of each
15 plaintiff and of other persons with physical disabilities to access this public accommodation.
16 Pursuant to 42 USC §12188(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . . injunctive
17 relief shall include an order to alter facilities to make such facilities readily accessible to and
18 usable by individuals with disabilities to the extent required by this title."

19 65. Each plaintiff seeks relief pursuant to remedies set forth in §204(a) of the
20 Civil Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations
21 adopted to implement the Americans with Disabilities Act of 1990, including but not limited
22 to an order granting injunctive relief and attorneys' fees. Each plaintiff will seek attorneys'
23 fees conditioned upon being deemed to be the prevailing party.

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II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.

(On Behalf of Plaintiff DAREN HEATHERLY and Plaintiff IRMA RAMIREZ, and Against Defendants WEST COLLEGE CENTER, LLC; GAGMAR, INC., a California Corporation dba G & G SUPER MARKET; and NUON PHARA, an individual dba PAGE'S DINER, inclusive)
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

66. Plaintiffs replead and incorporate by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 65 of this complaint.

67. At all times relevant to this action, California Civil Code §54 has provided that persons with physical disabilities are not to be discriminated against because of physical handicap or disability. This section provides that:

(a) Individuals with disabilities . . . have the same rights as the general public to full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, and other public places.

68. California Civil Code §54.1 provides that persons with disabilities shall not be denied full and equal access to places of public accommodation or facilities:

(a)(1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

Civil Code §54.1(a)(1)

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1 69. California Civil Code §54.1 further provides that a violation of the Americans
2 with Disabilities Act of 1990 constitutes a violation of section 54.1:

3 (d) A violation of the right of an individual under the
4 Americans with Disabilities Act of 1990 (Public Law 101-336)
5 also constitutes a violation of this section, and nothing in this
6 section shall be construed to limit the access of any person in
7 violation of that act.

8 Civil Code §54.1(d)

9 70. Plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ each is a
10 person within the meaning of Civil Code §54.1 whose rights have been infringed upon and
11 violated by the defendants, and each of them, as prescribed by Civil Code §§54 and 54.1.
12 Each specific architectural barrier which defendants knowingly and willfully fail and refuse
13 to remove constitutes a separate act in violation of Civil Code §§54 and 54.1. Each plaintiff
14 has been and continue to be denied full and equal access to defendants' public -
15 accommodations. As a legal result, each plaintiff is entitled to seek damages pursuant to a
16 court or jury determination, in accordance with California Civil Code §54.3(a) for each day
17 on which he/she visited or have been deterred from visiting the WEST COLLEGE CENTER
18 MALL because of his/her knowledge and belief that the subject mall is inaccessible to
19 persons with disabilities. California Civil Code §54.3(a) provides:

20 Any person or persons, firm or corporation, who denies or
21 interferes with admittance to or enjoyment of the public
22 facilities as specified in Sections 54 and 54.1 or otherwise
23 interferes with the rights of an individual with a disability
24 under Sections 54, 54.1 and 54.2 is liable for each offense for
25 the actual damages and any amount as may be determined by a
26 jury, or the court sitting without a jury, up to a maximum of
27 three times the amount of actual damages but in no case less
28 than . . . one thousand dollars (\$1,000) and . . . attorney's fees as
 may be determined by the court in addition thereto, suffered by
 any person denied any of the rights provided in Sections 54,
 54.1 and 54.2.

 Civil Code §54.3(a)

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1 71. On or about for each of their respective visits on all dates referenced within
2 the statute of limitations as referred in exhibit "A" relative to the overall parking, G & G
3 Market, and Page's Diner minus those occasions, if any, that each plaintiff will voluntarily
4 exclude as a form of mitigation and **deterrence occasion(s)**, plaintiff DAREN
5 HEATHERLY and plaintiff IRMA RAMIREZ on each of their respective visits as stated
6 herein suffered violations of Civil Code §§54 and 54.1 in that plaintiff DAREN
7 HEATHERLY and plaintiff IRMA RAMIREZ each was denied access to parking, elements
8 of the service counters, dining areas and restrooms and other public facilities as stated herein
9 at the G & G Market and Page's Diner which are public accommodations within the WEST
10 COLLEGE CENTER MALL and on the basis that plaintiff DAREN HEATHERLY and
11 plaintiff IRMA RAMIREZ each was a person with physical disabilities.

12 72. As a result of the denial of equal access to defendants' facilities due to the acts
13 and omissions of defendants, and each of them, in owning, operating and maintaining these
14 subject public facilities, plaintiff DAREN HEATHERLY suffered violations of plaintiff's
15 civil rights, including, but not limited to his rights under Civil Code §§51, 52, 54, 54.1, and
16 54.3, *et seq.*

17 73. As a result of the denial of equal access to defendants' facilities due to the acts
18 and omissions of defendants, and each of them, in owning, operating and maintaining these
19 subject public facilities, plaintiff IRMA RAMIREZ suffered violations of plaintiff's civil
20 rights, including, but not limited to her rights under Civil Code §§51, 52, 54, 54.1, and 54.3,
21 *et seq.*

22 74. Further, plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ each
23 suffered emotional distress, mental distress, mental suffering, mental anguish, which
24 includes, but is not limited to, shame, humiliation, embarrassment, upset, anger, frustration,
25 disappointment and worry, expectedly and naturally associated with a person with physical
26 disabilities encountering architectural barrier(s) as stated herein and being denied access, all
27 to his/her damages as prayed hereinafter in an amount within the jurisdiction of this court.

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1 No claim is being made for mental and emotional distress over and above that is usually
2 associated with the encountering of architectural barriers and legally resulting in adverse
3 experiences. No expert testimony regarding this usual mental and emotional distress will be
4 presented at trial in support of the claim for damages.

5 75. Each plaintiff has been damaged by defendants', and each of their, wrongful
6 conduct and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation
7 of each plaintiff's rights as a person or an entity that represents persons with physical
8 disabilities on or about for each of their respective visits on all dates referenced within the
9 statute of limitations as referred in exhibit "A" relative to the overall parking, G & G Market,
10 and Page's Diner minus those occasions, if any, that each plaintiff will voluntarily exclude as
11 a form of mitigation and **deterrence occasion(s)**, and on a continuing basis since then,
12 including statutory damages, a trebling of all of actual damages, general and special damages
13 available pursuant to §54.3 of the Civil Code according to proof.

14 76. As a result of defendants', and each of their, acts and omissions in this regard,
15 each plaintiff has been required to incur legal expenses and hire attorneys in order to enforce
16 each plaintiff's rights and enforce the provisions of the law protecting access for persons with
17 physical disabilities and prohibiting discrimination against persons with physical disabilities.
18 Pursuant to the provisions of Civil Code §54.3, each plaintiff therefore will seek recovery in
19 this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the prevailing
20 party. Additionally, plaintiffs' lawsuit is intended not only to obtain compensation for
21 damages to plaintiffs, but also to compel the defendants to make their facilities accessible to
22 all members of the public with disabilities, justifying public interest attorneys' fees, if
23 deemed the prevailing party, pursuant to the provisions of §1021.5 of the Code of Civil
24 Procedure.

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III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, *ET SEQ.*

(On Behalf of Plaintiff DAREN HEATHERLY and Plaintiff IRMA RAMIREZ, and Against Defendants WEST COLLEGE CENTER, LLC; GAGMAR, INC., a California Corporation dba G & G SUPER MARKET; and NUON PHARA, an individual dba PAGE'S DINER, inclusive)
(Health & Safety Code §19955, *et seq.*)

77. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 76 of this complaint.

78. Health & Safety Code §19955 provides in pertinent part:

The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code. For the purposes of this part "public accommodation or facilities" means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers. When sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the handicapped.

79. Health & Safety Code §19956, which appears in the same chapter as §19955, provides in pertinent part, "accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code" Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all public accommodations constructed or altered after that date. On information and belief, portions of the WEST COLLEGE CENTER MALL and/or of the building(s) were constructed and/or altered after July 1, 1970, and substantial portions of the WEST COLLEGE CENTER MALL and/or the building(s) had alterations, structural repairs, and/or additions made to such public accommodations after July 1, 1970, thereby requiring said mall and/or building to be subject to the requirements of Part 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or additions per Health & Safety Code §19959.

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1 80. Pursuant to the authority delegated by Government Code §4450, *et seq*, the
2 State Architect promulgated regulations for the enforcement of these provisions. Effective
3 July 1, 1982, Title 24 of the California Building Standards Code adopted the California State
4 Architect's Regulations and these regulations must be complied with as to any alterations
5 and/or modifications of WEST COLLEGE CENTER MALL and/or the building(s) occurring
6 after that date. Construction changes occurring prior to this date but after July 1, 1970
7 triggered access requirements pursuant to the "ASA" requirements, the American Standards
8 Association Specifications, A117.1-1961. On information and belief, at the time of the
9 construction and modification of said building, all buildings and facilities covered were
10 required to conform to each of the standards and specifications described in the American
11 Standards Association Specifications and/or those contained in the California Building Code.

12 81. Malls and shopping centers such as the WEST COLLEGE CENTER MALL
13 are "public accommodations or facilities" within the meaning of Health & Safety Code
14 §19955, *et seq*.

15 82. As a result of the actions and failure to act of defendants, and as a result of the
16 failure to provide proper and legally handicapped-accessible public facilities, each plaintiff
17 was denied plaintiff's rights to full and equal access to public facilities and suffered a loss of
18 each plaintiff's civil rights and each plaintiff's rights as a person with physical disabilities to
19 full and equal access to public facilities.

20 83. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,
21 each plaintiff has been required to incur legal expenses and hire attorneys in order to enforce
22 each plaintiff's civil rights and enforce provisions of the law protecting access for the persons
23 with physical disabilities and prohibiting discrimination against the persons with physical
24 disabilities, and to take such action both in each plaintiff's own interests and in order to
25 enforce an important right affecting the public interest. Each plaintiff, therefore, seeks in this
26 lawsuit the recovery of all reasonable attorneys' fees incurred, pursuant to the provisions of
27 the Code of Civil Procedure §1021.5.

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1 Each plaintiff additionally seeks attorneys' fees pursuant to Health & Safety Code §19953
 2 and Civil Code §§54.3 and/or in the alternative, each plaintiff will seek attorneys' fees, costs
 3 and litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C.
 4 200(a)-3(a)). Each plaintiff will seek attorneys' fees conditioned upon being deemed to be
 5 the prevailing party.

6 84. Each plaintiff seeks injunctive relief for an order compelling defendants, and
 7 each of them, to make the subject place of public accommodation readily accessible to and
 8 usable by persons with disabilities.

9 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND**
 10 **EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES**
 11 **AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51,**
 12 ***ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)***

13 (On Behalf of Plaintiff DAREN HEATHERLY and Plaintiff IRMA RAMIREZ, and
 14 Against Defendants WEST COLLEGE CENTER, LLC; GAGMAR, INC., a
 15 California Corporation dba G & G SUPER MARKET; and NUON PHARA, an
 16 individual dba PAGE'S DINER, inclusive)
 17 (Civil Code §51, 51.5)

18 85. Plaintiffs replead and incorporate by reference, as if fully set forth again
 19 herein, the allegations contained in paragraphs 1 through 84 of this complaint.

20 86. Defendants' actions and omissions and failure to act as a reasonable and
 21 prudent public accommodation in identifying, removing and/or creating architectural barriers,
 22 policies, practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights
 23 Act. The Unruh Act provides:

24 This section shall be known, and may be cited, as the
 25 Unruh Civil Rights Act.

26 All persons within the jurisdiction of this state are free
 27 and equal, and no matter what their sex, race, color, religion,
 28 ancestry, national origin, or **disability** are entitled to the full
 and equal accommodations, advantages, facilities, privileges, or
 services in all business establishments of every kind
 whatsoever.

This section shall not be construed to confer any right
 or privilege on a person that is conditioned or limited by law or
 that is applicable alike to persons of every sex, color, race,
 religion, ancestry, national origin, or **disability**.

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1 Nothing in this section shall be construed to require any
 2 construction, alteration, repair, structural or otherwise, or
 3 modification of any sort whatsoever, beyond that construction,
 4 alteration, repair, or modification that is otherwise required by
 5 other provisions of law, to any new or existing establishment,
 6 facility, building, improvement, or any other structure . . . nor
 shall anything in this section be construed to augment, restrict,
 or alter in any way the authority of the State Architect to
 require construction, alteration, repair, or modifications that the
 State Architect otherwise possesses pursuant to other . . . laws.

7 A violation of the right of any individual under the
 8 Americans with Disabilities Act of 1990 (Public Law 101-336)
 shall also constitute a violation of this section.

9 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
 10 “intent” of the defendants in not complying with barrier removal is not an issue. Hence, the
 11 failure on the parts of defendants, as reasonable and prudent public accommodations, in
 12 acting or failing to act to identify and remove barriers can be construed as a “negligent per
 13 se” act of defendants, and each of them.

14 87. The acts and omissions of defendants stated herein are discriminatory in
 15 nature and in violation of Civil Code §51.5:

16 No business establishment of any kind whatsoever shall
 17 discriminate against, boycott or blacklist, refuse to buy from,
 18 sell to, or trade with any person in this state because of the race,
 19 creed, religion, color, national origin, sex, or **disability** of the
 person or of the person’s partners, members, stockholders,
 directors, officers, managers, superintendents, agents,
 employees, business associates, suppliers, or customers.

20 As used in this section, “person” includes any person,
 21 firm association, organization, partnership, business trust,
 corporation, limited liability company, or company.

22 Nothing in this section shall be construed to require any
 23 construction, alteration, repair, structural or otherwise, or
 24 modification of any sort whatsoever, beyond that construction,
 25 alteration, repair or modification that is otherwise required by
 26 other provisions of law, to any new or existing establishment,
 facility, building, improvement, or any other structure . . . nor
 shall anything in this section be construed to augment, restrict
 or alter in any way the authority of the State Architect to
 require construction, alteration, repair, or modifications that the
 State Architect otherwise possesses pursuant to other laws.

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1 88. Defendants' acts and omissions as specified have denied each plaintiff full and
2 equal accommodations, advantages, facilities, privileges and services in a business
3 establishment, on the basis of physical disability, in violation of Civil Code §§51 and 51.5,
4 the Unruh Civil Rights Act. Furthermore, pursuant to the 1992 amendment to California
5 Civil Code §51, "A violation of the right of any individual under the Americans with
6 Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this
7 section." Each plaintiff accordingly incorporates the entirety of his/her above cause of action
8 for violation of the Americans with Disabilities Act at ¶54, *et seq.*, as if replied herein.

9 89. As a result of the denial of equal access to defendants' facilities due to the acts
10 and omissions of defendants, and each of them, in owning, operating and maintaining these
11 subject public facilities, plaintiff DAREN HEATHERLY suffered violations of plaintiff's
12 civil rights, including, but not limited to his rights under Civil Code §§51, 52, 54, 54.1, and
13 54.3, *et seq.*

14 90. As a result of the denial of equal access to defendants' facilities due to the acts
15 and omissions of defendants, and each of them, in owning, operating and maintaining these
16 subject public facilities, plaintiff IRMA RAMIREZ suffered violations of plaintiff's civil
17 rights, including, but not limited to her rights under Civil Code §§51, 52, 54, 54.1, and 54.3,
18 *et seq.*

19 91. Further, plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ
20 each suffered emotional distress, mental distress, mental suffering, mental anguish, which
21 includes, but is not limited to, shame, humiliation, embarrassment, upset, anger, frustration,
22 disappointment and worry, expectedly and naturally associated with a person with physical
23 disabilities encountering architectural barrier(s) as stated herein and being denied access, all
24 to his/her damages as prayed hereinafter in an amount within the jurisdiction of this court.
25 No claim is being made for mental and emotional distress over and above that is usually
26 associated with the encountering of architectural barriers and legally resulting in adverse
27 experiences. No expert testimony regarding this usual mental and emotional distress will be
28 presented at trial in support of the claim for damages.

1 92. Plaintiff DAREN HEATHERLY and plaintiff IRMA RAMIREZ are
 2 entitled to the rights and remedies of §52(a) of the Civil Code, including trebling of actual
 3 damages (defined by §52(h) of the Civil Code to mean “special and general damages”), as
 4 well as to reasonable attorneys’ fees and costs, as is allowed by statute, according to proof if
 5 deemed to be the prevailing party.

6 **PRAYER:**

7 Plaintiffs pray that this court award damages and provide relief as follows:

8 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
 9 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS**
 10 **WITH DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**
 (On Behalf of Plaintiff DAREN HEATHERLY and Plaintiff IRMA RAMIREZ, and
 11 Against Defendants WEST COLLEGE CENTER, LLC; GAGMAR, INC., a
 California Corporation dba G & G SUPER MARKET; and NUON PHARA, an
 individual dba PAGE’S DINER, inclusive)
 12 (42 U.S.C. §12101, *et seq.*)

13 1. For injunctive relief, compelling defendants WEST COLLEGE CENTER,
 14 LLC; GAGMAR, INC., a California Corporation dba G & G SUPER MARKET; and NUON
 15 PHARA, an individual dba PAGE’S DINER, inclusive, to make the WEST COLLEGE
 16 CENTER MALL, located at 1007 - 1211 West College Avenue, Santa Rosa, California,
 17 readily accessible to and usable by individuals with disabilities, per 42 U.S.C §12181, *et seq.*,
 18 and to make reasonable modifications in policies, practice, eligibility criteria and procedures
 19 so as to afford full access to the goods, services, facilities, privileges, advantages and
 20 accommodations being offered.

21 2. For attorneys’ fees, litigation expenses and costs of suit, if plaintiffs are
 22 deemed the prevailing party; and

23 3. For such other and further relief as the court may deem proper.

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II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, *ET SEQ.*

(On Behalf of Plaintiff DAREN HEATHERLY and Plaintiff IRMA RAMIREZ, and Against Defendants WEST COLLEGE CENTER, LLC; GAGMAR, INC., a California Corporation dba G & G SUPER MARKET; and NUON PHARA, an individual dba PAGE'S DINER, inclusive)
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. For injunctive relief, compelling defendants WEST COLLEGE CENTER, LLC; GAGMAR, INC., a California Corporation dba G & G SUPER MARKET; and NUON PHARA, an individual dba PAGE'S DINER, inclusive, to make the WEST COLLEGE CENTER MALL, located at 1007 - 1211 West College Avenue, Santa Rosa, California, readily accessible to and usable by individuals with disabilities, per state law.

2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for each occasion on which plaintiffs were deterred from returning to the subject public accommodation.

3. Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure §1021.5, if plaintiffs are deemed the prevailing party;

4. Treble damages pursuant to Civil Code §54.3;

5. General damages according to proof;

6. For all costs of suit;

7. Prejudgment interest pursuant to Civil Code §3291; and

8. Such other and further relief as the court may deem just and proper.

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**III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE
SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE
§19955, *ET. SEQ.***

(On Behalf of Plaintiff DAREN HEATHERLY and Plaintiff IRMA RAMIREZ, and
Against Defendants WEST COLLEGE CENTER, LLC; GAGMAR, INC., a
California Corporation dba G & G SUPER MARKET; and NUON PHARA, an
individual dba PAGE'S DINER, inclusive)
(Health & Safety code §19955, *et seq.*)

1. For injunctive relief, compelling defendants WEST COLLEGE CENTER,
LLC; GAGMAR, INC., a California Corporation dba G & G SUPER MARKET; and NUON
PHARA, an individual dba PAGE'S DINER, inclusive, to make the WEST COLLEGE
CENTER MALL, located at 1007 - 1211 West College Avenue, Santa Rosa, California,
readily accessible to and usable by individuals with disabilities, per state law.

2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or,
alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing party;

3. For all costs of suit;

4. For prejudgment interest pursuant to Civil Code §3291;

5. Such other and further relief as the court may deem just and proper.

**IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS
TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES,
FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF
CALIFORNIA CIVIL CODE §51, *ET SEQ.* (THE UNRUH CIVIL RIGHTS
ACT)**

(On Behalf of Plaintiff DAREN HEATHERLY and Plaintiff IRMA RAMIREZ, and
Against Defendants WEST COLLEGE CENTER, LLC; GAGMAR, INC., a
California Corporation dba G & G SUPER MARKET; and NUON PHARA, an
individual dba PAGE'S DINER inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

1. All statutory damages as afforded by Civil Code §52(a) for the date of incident
and for each occasion on which plaintiffs were deterred from returning to the subject public
accommodation;

2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the
prevailing party;

3. General damages according to proof;

4. Treble damages pursuant to Civil Code §52(a);

- 1 5. For all costs of suit;
- 2 6. Prejudgment interest pursuant to Civil Code §3291; and
- 3 7. Such other and further relief as the court may deem just and proper.
- 4
- 5

6 Dated: December 16, 2014

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

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9 By: ___/s/Thomas E. Frankovich _____
 Thomas E. Frankovich
10 Attorney for Plaintiff DAREN HEATHERLY and
11 Plaintiff IRMA RAMIREZ

12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

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16 Dated: December 16, 2014

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

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18 By: ___/s/Thomas E. Frankovich _____
 Thomas E. Frankovich
19 Attorney for Plaintiff DAREN HEATHERLY and
20 Plaintiff IRMA RAMIREZ

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